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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Portland Division

LOREN STOUT and PIPER STOUT,
Plaintiffs,

v.

U.S. FOREST SERVICE and U.S. FISH
AND WILDLIFE SERVICE,

Defendants.

No. CV 09-152-HA

**CORRECTION TO PLAINTIFFS'
RESPONSE TO DEFENDANTS' BRIEF
TO SHOW CAUSE**

Late yesterday, counsel for defendants brought to plaintiffs' attention that the response to show cause brief was inaccurate in one regard. Plaintiffs do not want to have this Court make a decision on this matter based on incorrect information. In that light, plaintiffs wish to note that federal defendants did mention their intent to file a reply in their February 9, 2011 motion for

extension (Dkt. # 52). They also, at that time, indicated that their “response” would be “opening summary judgment papers.” The Court’s order on the following day did not address a deadline for filing a reply brief. It only granted defendants additional time to file a response. Still, by that time, plaintiffs would have been on notice that defendants intended to file a summary judgment brief rather than a response.

Plaintiffs do not believe that these facts change the overall merits of the issues addressed in plaintiffs’ response to show cause brief. In particular, even if plaintiffs had been on notice from the start that it was defendants’ intent to file a cross-motion, there has still been extensive delay in this case, and plaintiffs’ positions in the response to show cause brief are based substantially on the effect that further delay, caused by additional briefing by defendants, would have on plaintiffs’ case. In other words, it is the effect of additional delay, as opposed to whether or when plaintiffs were on notice about defendants’ intent to file a cross-motion, that is the key reason for plaintiffs’ suggestion that the Court follow the course of its February 14, 2011 order and take plaintiffs’ partial motion for summary judgment under advisement as of February 25th.

Again, while plaintiffs do not believe that the timing of defendants putting plaintiffs on notice of their intent to file a cross-motion warrants a different result in this case, they did want to ensure that the Court had an accurate representation of the facts in the briefs filed on this

matter. In that light, plaintiffs request that the Court consider this correction as it makes a decision on this matter.

Dated this 18th day of February, 2011.

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